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File No. O. Railways/51

Legal Department

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Subject:— Opinions under the Indian Railways Act, 1890

File No. O. Railways/51

Gen. 184

188

CONTENTS.

Legal Department File No. O. Railways / 51.

Sr. No.	R.T. / O. No.	Subject.	Pages.
		Indian Railways Act, 1890.	
1	1904 28-11-51.	Whether a claim can be preferred against Railway authorities for the damaged goods as also for the missing goods by the Cloth Textile controller.	1 - 2.

GJT. 27.6. 4 cd.

The responsibility of the Railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway is subject to the other provisions of the Indian Railways Act, 1890 to be that of a bailee under sections 151 (of the Indian Contract Act,) 152 and 161 1872. Under Section (151 of the Indian Contract Act,) the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would under similar circumstances, take of his own goods while under section 152 he is not responsible for the loss if he has taken the amount of care as described in Section 151. Similarly Section 161 provides that if by the fault of the bailee the goods are not returned or delivered at at the proper time he is responsible for loss or destruction from that time. In India the liability of the railway administration is not that of an insurer of goods. However the onus of proving that the railway administration took as much care of the goods bailed as a man of ordinary prudence is on the administration (Mbolji Sicka & Co. vs. B.N. Rly. Co.Ltd. (1931) 35 Cawnpore Weekly Notes, 1242.) The loss or damage of goods entrusted to the Railway administration is prima facie evidence of its negligence. The Administration cannot dispose of the claim by a bare assertion that the loss has arisen due to a theft from a running train and has to discharge the burden of disproving negligence.

negligence.

The liability of a railway administration is also subject, among other, to the provisions of Section 93 of the Indian Railways Act. This Section provides that - when any article mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for loss, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk. As claim has been included as item No. 3 in the second Schedule to the Act, it is presumed that a declaration as required by the Section has been filed. Under sub-section (2) the compensation recoverable will be limited to the value so declared.

3. Section 77 of the Railways Act provides that a person shall not be entitled to compensation unless his claim for compensation has been preferred in writing with Administration within six months from the date of the delivery of the goods to the Administration. The State Textile Controller may, therefore, take immediate steps to send to the appropriate officer as specified in Section

GJT. 27.6. 4 c

(continued from page No. 27.)

140 of the Act a notice in writing setting out the particulars of the claim.

Sd: R.D.N.

27/9.

Solicitor to Governmonr.

U.R. to STC/DT/NP. No. 19046, dated, 28th November 1951.

GJT. 27/6. 4 c.